

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK  
\_\_\_\_\_  
THEODORE DALTON,

Plaintiff,

9:03-CV-1363  
(FJS)(RFT)

v.

NURSE MOJIDA,

\_\_\_\_\_  
Defendant.

APPEARANCES:

\_\_\_\_\_  
OF COUNSEL:

THEODORE DALTON  
Plaintiff, *pro se*  
03-A-0526  
Bare Hill Correctional Facility  
181 Brand Road  
Caller Box 20  
Malone, New York 12953

HON. ELIOT SPITZER  
Attorney General of the State of New York  
Counsel for the Defendant  
The Capitol  
Albany, New York 12224

CHRISTOPHER W. HALL, ESQ.  
Assistant Attorney General

RANDOLPH F. TREECE, MAGISTRATE JUDGE

### ORDER

Presently before the Court is a Motion to Compel Discovery. Dkt. No. 17. By this Motion, Defendant seeks an order of this Court directing Plaintiff to respond to Defendant's outstanding discovery requests. *Id.* Plaintiff has not responded to the Motion.

By his Complaint in this action, Plaintiff alleges that he suffered a serious injury to his left ankle which required medical treatment. Dkt. No. 1, Compl. Plaintiff claims that Defendant Nurse Mojida was deliberately indifferent to, and denied him proper care for, this serious medical condition. *Id.*

In October 2004, Defendant served Plaintiff with a set of interrogatories and a request for

production of documents. Dkt. No. 17 at ¶ 3, Ex. 1. Defendant also demanded that Plaintiff execute a form authorizing the release of his medical records. *Id.* Upon Plaintiff's failure to comply with these discovery requests, Defendant sought an order from this Court directing a response. Dkt. No. 15. By Order, filed November 23, 2004, Plaintiff was directed to respond to the outstanding discovery requests. Dkt. No. 16. Defendant, having received no response from Plaintiff, filed this Motion to Compel. Dkt. No. 17.

Defendant's discovery requests consist of three interrogatories and three requests for documents. Dkt. No. 17, Ex. 1. The requests are proper in form and Defendant's Motion to Compel Plaintiff to respond thereto is **granted**.

Defendant also seeks an order directing Plaintiff to execute a form authorizing the New York State Department of Correctional Services to release Plaintiff's medical records to Defendant's counsel for purposes of this litigation. Dkt. No. 17, Ex. 1. Due to the nature of Plaintiff's causes of action herein, Plaintiff has placed his diagnosis of and treatment for the alleged ankle injury in issue in this litigation and Defendant is clearly entitled to discovery of Plaintiff's medical records relating to that condition. Moreover, Defendant is entitled to obtain those documents directly from Plaintiff's medical providers by means of a release form. Accordingly, Defendant's Motion to Compel is **granted** with respect to the authorization form previously provided to Plaintiff and Plaintiff is directed to sign and return to Defendant's counsel such authorization form.

### CONCLUSION

Defendant's Motion to Compel is **granted**. Plaintiff shall provide Defendant with responses to the outstanding interrogatories and requests for production of documents **within**

**twenty (20) days** of the filing date of this Order. Defendant's counsel shall re-send Plaintiff a medical authorization form, which Plaintiff shall sign and return to Defendant's counsel **within five (5) days** of his receipt thereof.

Plaintiff is advised that his failure to provide the requested discovery may result in the imposition of sanctions, including dismissal of this action, pursuant to Rule 37 of the Federal Rules of Civil Procedure. FED. R. CIV. P. 37(b)(2).

WHEREFORE, based upon the foregoing, it is hereby

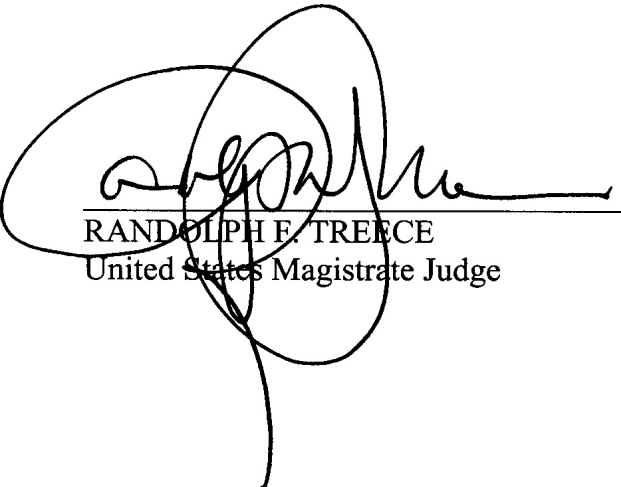
ORDERED, that Defendant's Motion to Compel (Dkt. No. 17) is **granted**. Plaintiff shall provide Defendant with responses to the outstanding interrogatories and requests for production of documents **within twenty (20) days** of the filing date of this Order. Defendant's counsel shall re-send Plaintiff a medical authorization form, which Plaintiff shall sign and return to Defendant's counsel **within five (5) days** of his receipt thereof; and it is further

ORDERED, that Defendant's counsel advise the Court of the status of discovery in this action **no later than June 30, 2005**. The dispositive motion filing deadline is extended without date pending further Order of this Court; and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties.

IT IS SO ORDERED.

Date: May 25, 2005  
Albany, New York



RANDOLPH F. TREECE  
United States Magistrate Judge